fore, because of the anomalous rule of damages at law, is such equitable interference justifiable.[10] The basis of this relief in other jurisdictions is said to be the necessity of protecting the private landowner, because of his unequal position, against the abuse of the extensive power of eminent domain granted to large corporations.[11] But, unless the corporation is irresponsible or insolvent, the only hardship on the plaintiff in leaving him to his remedy at law is a possible delay in receiving compensation.[12] In other words, it would seem that the plaintiff, to entitle him to such a conditional injunction, should show his remedy at law to be inadequate.[13] Moreover, even assuming that there may be proper equitable jurisdiction in the case of land appropriated, the difficulty of accurately determining damages in advance may give cause for a different rule where no land is actually taken. For until the structure is built and trains are running, it may be speculative even to say that any legal right of the plaintiff will be infringed; then, too, a rise in the value of the lands in the vicinity because of the improvement may reduce his claim to nominal damages.[14] It is true that this argument applies equally against condemning in advance these intangible rights; but it is not a great hardship to make the plaintiff wait until he has been actually damaged before suing at law for compensation.

THE JURISDICTION OF EQUITY OVER THE REALTY OF AN INFANT. — Whenever a suit is instituted in a court of chancery relative to an infant's person or property, the infant is treated as the ward of the court, under its special cognizance and protection.[1] This jurisdiction seems to have had its origin in the functions of the king as *parens patriae*, and to have been transferred to the courts of chancery at an early date.[2] The infant's personal estate, even though derived as an income from realty, has always been at the disposition of the court.[3] His legal estates in realty, however, could not, by the old English law, be converted into personalty.[4] The reason for the distinction appears to have been that by changing the nature of the minor's estate from real to personal, the rights of third persons who would be entitled to succeed in case of the minor's death would be materially affected, inasmuch as personalty and realty descended in different channels.[5] Although this reason may once have been valid, it loses all force in view of the modern doctrine of equitable conversion, by which the proceeds of realty are treated in equity as realty until the infant, upon reaching majority, exercises his election.[6] Consequently many of our states have

[10] See Pond *v.* Metropolitan Elevated Ry., 112 N. Y. 186, 189.
[11] See East R. R. *v.* E. T. R. R., 75 Ala. 275.
[12] See McElroy *v.* Kansas City, 21 Fed. 257.
[13] In McElroy *v.* Kansas City, *supra*, the insolvency of the corporation was considered in determining the balance of convenience.
[14] Bohm *v.* Metropolitan Elevated Ry., 129 N. Y. 576.

[1] Lloyd *v.* Kirkwood, 112 Ill. 329; Rogers *v.* McLean, 34 N. Y. 536.
[2] See Losey *v.* Stanley, 147 N. Y. 560, 569.
[3] Winchester *v.* Norcliffe, 1 Vern. 434; Matter of Stevens, 114 N. Y. App. Div. 607.
[4] Russel *v.* Russel, 1 Molloy, 525; Calvert *v.* Godfrey, 6 Beav. 97.
[5] See Hale *v.* Hale, 146 Ill. 227, 249; Richards *v.* East Tennessee, etc. Ry. Co., 106 Ga. 614, 635.
[6] *In re* McMillan, 126 N. Y. App. Div. 155.

rejected the English distinction and asserted an inherent power in their equity courts to decree the sale of infants' lands.[7] The need of such jurisdiction is obvious in the case of infants whose estates are burdened with unproductive realty; and its wisdom is everywhere recognized by remedial legislation. Despite the statutes, however, the question of inherent jurisdiction is not yet at rest, but emerges when strict compliance has not been made with statutory provisions.[8]

A recent case tests the jurisdiction of equity from an unusual point of view. The plaintiff purchased a farm from infant heirs under a contract and deed, both of which recited the contents of the farm as "245 acres, more or less." After the sale had been completed and ratified by the court on the infants' behalf, the plaintiff discovered that the farm contained only 235 acres. He thereupon brought a bill in equity against his vendors, asking for an abatement in the purchase price, and was allowed to recover. *McComb* v. *Gilkeson*, 66 S. E. 77 (Va.). Reformation because of a mutual mistake of fact is one of the most common grounds of equitable jurisdiction; and there can be no doubt that a court may intervene to rescind or reform an executed transaction for the benefit of an infant.[9] In the present case, however, the decree was adverse to the infants. The statutes empowering the sale of infants' lands explicitly limit the jurisdiction to sales which are made in the interest of the infant. It has accordingly been held that since the court has no general jurisdiction to decree the sale of infants' lands, it cannot decree reformation adversely to an infant where his guardian and the purchaser have made a mutual mistake of fact respecting the amount of land covered by the deed.[10] The decision in the present case is manifestly more just and might possibly be reached without logical difficulty on a more liberal interpretation of the statute. Nevertheless, the case suggests the practical advantage of admitting an inherent power in a court of equity, as paramount guardian, to deal as freely with the realty of infants as with their personalty.[11]

PRIVILEGE OF NON-RESIDENT PARTIES AND WITNESSES FROM SERVICE OF PROCESS. — From early times parties and witnesses in any form of judicial proceeding have been privileged from arrest on civil process, *eundo, morando, et redeundo*.[1] The privilege was not primarily personal, but rather the privilege of the court, its object being to prevent any clogging of the

[7] Sale of lands for an advantageous division or better investment: Dampier *v.* McCall, 78 Ga. 607; King *v.* King, 215 Ill. 100; Fitzpatrick *v.* Beal, 62 Miss. 244; Thorington *v.* Thorington, 82 Ala. 489 (sale of infants' estate in remainder). *Contra*, Elliot *v.* Fowler, 112 Ky. 376; Losey *v.* Stanley, 147 N. Y. 560; Rhea *v.* Shields, 103 Va. 305.

[8] Richards *v.* East Tennessee, etc. Ry. Co., *supra;* Elliot *v.* Fowler, *supra.*

[9] Reynolds *v.* McCurry, 100 Ill. 356.

[10] Dickey *v.* Beatty, 14 Oh. St. 389.

[11] A case decided subsequently to the principal case wrought a distinct hardship upon an infant by refusing inherent jurisdiction over his land. The infant took an interest in land under a will which was refused probate because of invalidity. The infant's claim was thereafter advantageously compromised with the sanction of the court. Upon a dispute as to the title of the land, the settlement was held ineffectual. Dixon *v.* Cozine, 64 N. Y. Misc. 602.

[1] VINER, ABRIDGMENT, Tit. "Privilege," B. pl. 3 (Party); C. pl. 16 (Witness).